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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536

File: EAC 01 129 53073

Office: VERMONT SERVICE CENTER

Date: MAY 14 2003

IN RE: Petitioner:
Beneficiary:

PUBLIC COPY

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a non-profit organization established to operate residential homes for mentally handicapped individuals. The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ her as a senior co-worker educator.

The director denied the petition, finding that the petitioner failed to establish that it is a qualifying religious organization, that the offered position qualifies as a religious occupation or vocation for the purpose of special immigrant classification, and that the beneficiary has had the requisite two years of continuous experience in a religious occupation.

On appeal, counsel for the petitioner submits a statement in support of the appeal, asserting that the petitioner is a qualifying religious organization, the beneficiary has been employed for the requisite two years, and that the offered position is a religious occupation or vocation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a native and citizen of Germany. The beneficiary has entered the United States on eleven occasions. She has entered the country as a nonimmigrant academic student (F-1), and as a nonimmigrant religious worker (R-1). She most recently entered the United States as a nonimmigrant on January 3, 2001 and her status expired on February 2, 2001. The record reflects that the beneficiary remained beyond any period of authorized stay and has resided since such time in an unlawful status.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy several eligibility requirements.

The first issue to be addressed in this proceeding is whether the petitioner is a qualifying religious organization.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The petitioner provided the Bureau with a letter from the Internal Revenue Service indicating that the petitioner was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code on the basis that it is an organization described in section 170(b)(1)(A) of the Internal Revenue Code, i.e., a charity. The director determined that the petitioner failed to establish that the petitioner qualifies as a tax-exempt religious organization. On appeal, counsel for the petitioner asserts that it meets 8 C.F.R. § 204.5(m)(3)(i)(B) by providing the Bureau with a letter from the petitioner explaining how it is a religious denomination and a nonprofit organization, a letter from an expert stating that the petitioner is closely associated with the Christian community, and evidence that the petitioner was granted 501(c)(3) status by the Internal Revenue Service. Counsel's arguments are not persuasive. The regulation requires evidence of either actual recognition as a tax-exempt religious organization, or the required documentation for such recognition. The petitioner has failed to

establish that it is a qualifying organization.

The second issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation or vocation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation or vocation as defined in the regulations.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

In this case, the petitioner asserts that:

While [the beneficiary's] duties necessarily include providing care and instruction to mentally retarded young adults, these duties are secondary to the primary goal of developing the spirit of these companions, and creating a religious based community which includes all. Moreover, [the beneficiary] instructs in the area of moral and ethical development in preparing for weekly religious lessons, Sunday worship service and celebration of Christian festivals.

The director determined that the record is insufficient to establish that the position of senior co-worker educator qualifies as either a religious occupation or vocation. The director further determined that the petitioner failed to establish that the

position is traditionally a permanent salaried position or that the duties of the position require specific religious training. The director further determined that the duties are primarily secular.

After a review of the record, it is concluded that the petitioner has not established that the position of "senior co-worker educator" constitutes a qualifying religious occupation.

The petitioner submitted no documentation that the position is a traditional full-time paid occupation in its denomination. The petitioner states that the position is non-salaried.

The petitioner failed to establish that the offered position involves an activity relating to a traditional religious function.

This set of facts is insufficient to establish that the proposed position is a traditional religious occupation of the petitioner.

On appeal, counsel for the petitioner asserts that the offered position is a religious vocation. The petitioner failed to provide evidence in support of its assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner failed to establish that the offered position is a religious vocation within the meaning of 8 C.F.R. § 204.5(m)(2).

The final issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on March 14, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation or vocation since at least March 14, 1999.¹

The petitioner submitted a letter from its Executive Director, stating that the beneficiary has worked for the petitioner as a full-time senior co-worker since 1996 without salary. The letter

¹ The director erred in writing that the petitioner must establish that the beneficiary was continuously carrying on the religious vocation or occupation since March 14, 1998.

states:

As for all [REDACTED] [the beneficiary] does not receive a specific wage, traditionally defined. She is given room, board, medical insurance, and spending money for personal expenses from community resources at [REDACTED] Special Schools. All of her needs will be met through this method of sharing community resources, and she will not need to engage in supplemental employment for support.

The director determined that the petitioner had failed to establish that the beneficiary has the required two years of experience in the religious occupation in the absence of any evidence to show that the beneficiary had been paid for her services.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. The regulations are silent on the question of volunteer work satisfying the requirement. The regulations were drafted in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. The regulations distinguish religious vocations from lay religious occupations. 8 C.F.R. § 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. While such persons are not employed *per se* in the conventional sense of salaried employment, they are fully financially supported and maintained by their religious institution and are answerable to that institution. The regulation defines a lay religious occupation, in contrast, in general terms as an activity related to a "traditional religious function." *Id.* Such lay persons are employed in the conventional sense of salaried employment. The regulations recognize this distinction by requiring that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been continuous salaried employment in order to qualify as well.

In review, the petitioner has failed to overcome the director's objection to approving the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.